



U.S. Department of Commerce
National Oceanic and Atmospheric Administration



Agency

U.S. Environmental Protection

Mr. Jim Rue, Director
Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, Oregon 97301-2540

Mr. Dick Pedersen, Director
Department of Environmental Quality
811 SW 6th Ave.
Portland, Oregon 97204-1390

Dear Directors Rue and Peterson:

The National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) are writing to inform you that we have found that Oregon has failed to submit a fully approvable coastal nonpoint program under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). Specifically, NOAA and EPA find that Oregon has failed to satisfy the additional management measures for forestry condition set forth in the *Findings for the Oregon Coastal Nonpoint Program*, transmitted to the State on January 13, 1998. This letter transmits a copy of the determination document that explains why the Federal agencies have found that Oregon has failed to satisfy this condition.

Oregon has made considerable progress to address many of the conditions placed on its program. For example, since NOAA and EPA's proposed finding (December 20, 2013) that the state failed to submit an approval Coastal Nonpoint Plan (CNP), Oregon has adequately addressed the on-site disposal and new development management measures. However, Oregon has not yet fully addressed the additional management measures for forestry. Consequently, NOAA and EPA were not able to find that Oregon has satisfied the condition related to additional management measures for forestry.

This decision was made after careful consideration of the public comments received on the federal agencies' December 20, 2013 proposed decision, as well as review of Oregon's March 2014 program submission. NOAA and EPA will announce this decision in the Federal Register. We anticipate the announcement to be published on or about January 30, 2014. You also can find a copy of this decision document and the response to comments on NOAA's website at <http://coast.noaa.gov/czm/pollutioncontrol/>.

Please note that while NOAA and EPA are only basing this decision on Oregon's failure to satisfy the additional management measures for forestry condition, there still remains a need, as with all states with conditional approvals, to complete the full assessment of Oregon's program with respect to all the other CZARA program requirements. While NOAA and EPA have over the years given Oregon "interim" approvals for many of the other CZARA management measures, the agencies noted at that time that these were preliminary decisions pending public comment once a complete program submittal was available. If and when NOAA and EPA believe that Oregon has met all CZARA requirements, then the public will be provided an opportunity to comment on the proposed decision to fully approve the state's entire coastal nonpoint program, as well as the

rationale for such a decision. At that point and after consideration of public comment, a final decision will be made on Oregon's entire coastal nonpoint program.

In addition, we understand that Oregon intends to work towards achieving full approval of the CZARA program. In recognition of Oregon's expressed intentions, NOAA and EPA defer imposition of penalties until FY16. We have heard from you that this is a reasonable period of time for the state to address the shortfalls in the forestry management measures. To assist the state in getting over the bar, enclosed is an overview of the options the state can consider to close the gap in forestry management measures. These options for forestry are relevant to closing the gap for CZARA and for coho recovery. Both NOAA and EPA stand ready to engage with the state in conversations to help achieve its intended goal.

NOAA and EPA recognize the challenges Oregon faces in developing a fully approvable coastal nonpoint program. We are committed to continuing to work with you and your staff to address the remaining conditions. If you have any questions regarding the agencies' decision, please contact Jeff Payne at 846-740-1207 or Dennis McLerran at 206-553-1234; or have your staff contact Joelle Gore (NOAA) at 301-563-1178, or Christine Psyk (EPA) at 206-553-1906.

Sincerely,

Jeff Payne, Acting Director
Office for Coastal Management
National Oceanic and Atmospheric
Administration

Dennis McLerran, Regional Administrator
Region 10
U.S. Environmental Protection Agency

Enclosures: NOAA/EPA Final Determination for the Oregon Coastal Nonpoint Program
Options for Closing the Gap on Forestry Management Measures

cc: Ms. Patty Snow, DLCD
Mr. Eugene Foster, DEQ



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~~While Oregon has made considerable progress to addressing many of the conditions placed on its program. For example, since NOAA and EPA's proposed finding (December 20, 2013) that the state failed to submit an approval Coastal Nonpoint Plan (CNP), Oregon has adequately addressed the on-site disposal and new development management measures. However, Oregon has not yet fully addressed the additional management measures for forestry. Consequently, NOAA and EPA were not able to find that Oregon has satisfied the condition related to additional management measures for forestry. NOAA and EPA were not able to find that Oregon has satisfied the condition related to additional management measures for forestry.~~

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Please note that while NOAA and EPA are only basing this decision on Oregon's failure to satisfy the additional management measures for forestry condition, there still remains a need, as with all states with conditional approvals, to complete the full assessment of Oregon's program with respect to all the other CZARA program requirements. While NOAA and EPA have over the years given Oregon "interim" approvals for many of the other CZARA management measures, the agencies noted at that time that these were preliminary decisions pending public comment once a complete program submittal was available. If and when NOAA and EPA believe that Oregon has met all CZARA requirements, then the public will be provided an opportunity to comment on the proposed decision to fully approve the state's entire coastal nonpoint program, as well as the

Ex. 5 - Deliberative

rationale for such a decision. At that point and after consideration of public comment, a final decision will be made on Oregon's entire coastal nonpoint program. Please note that while NOAA and EPA are only basing this decision on Oregon's failure to satisfy the additional management measures for forestry condition, that does not necessarily mean Oregon has fully met all other CZARA program requirements and that no further action will be needed to address other CZARA management measures. While NOAA and EPA had previously given Oregon "interim" approvals for many of the other CZARA management measures, the agencies noted that these were only preliminary decisions pending public comment. If and when NOAA and EPA believe that Oregon has met all CZARA requirements, then the public will be provided an opportunity to comment on the proposed decision to fully approve the state's coastal nonpoint program, as well as the rationale for such a decision. Information the public provides during the comment period may cause NOAA and EPA to reassess an earlier "interim" decision or request Oregon to provide additional information or clarification.

In addition, we understand that Oregon intends to work towards achieving full approval of the CZARA program. In recognition of Oregon's expressed intentions, NOAA and EPA defer imposition of penalties until FY16 until the end of calendar year 2015. We have heard from you that this is a reasonable period of time for the state to address the shortfalls in the forestry management measures. To assist the state in getting over the bar, enclosed is an overview of the options the state can consider to close the gap in forestry management measures. These options for forestry are relevant to closing the gap for CZARA and for coho recovery. Both NOAA and EPA stand ready to engage with the state in conversations to help achieve its intended goal.

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NOAA and EPA recognize the challenges Oregon faces in developing a fully approvable coastal nonpoint program. We are committed to continuing to work with you and your staff to address the remaining conditions, so that full funding to the state can be restored. If you have any questions regarding the agencies' decision, please contact Jeff Payne at 846-740-1207 or Dennis McLerran at 206-553-1234; or have your staff contact Joelle Gore (NOAA) at 301-563-1178, or Christine Psyk (EPA) at 206-553-1906.

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